

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Michael C. Powers, et al.
Serial No.: 09/110,103
Filing Date: July 1, 1998
Group Art Unit: 2163
Examiner: M. Irshadullah
Title: SYSTEM AND METHOD FOR IMPORTING
PERFORMANCE DATA INTO A PERFORMANCE
EVALUATION SYSTEM

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

RECEIVED
SEP 17 2002
GROUP 3600

DECLARATION OF FACTS

I declare as follows:

1. My name is Samir A. Bhavsar. I am over the age of eighteen years, of sound mind, and competent in all respects to make this Declaration. Except as explicitly noted, I have personal knowledge of the facts set forth herein. The facts set forth herein are true and correct to the best of my present knowledge.

2. I am a patent attorney for the law firm of BAKER BOTTS L.L.P. The law firm of BAKER BOTTS L.L.P. has represented Teknekron Infoswitch Corporation, now E-Talk Corporation, in various patent matters. I am handling the prosecution of the above identified patent application on behalf of E-Talk Corporation.

3. The inventors of the above identified patent application were employed at Teknekron Infoswitch Corporation prior and subsequent to April 30, 1998. Several inventors are no longer employed by Teknekron Infoswitch Corporation, now E-Talk Corporation.

4. On April 25, 2002, an Office Action in the above identified patent application was issued by the Examiner. In this Office Action, the Examiner rejected Claims 1-17 under U.S.C. § 103 as being anticipated by Havens, U.S. Pat. No. 5,909,669 ("Havens") in view of Powers, U.S. Pat. No. 6,044,368 ("Powers").

5. In preparation for the response to the Office Action, a Declaration under 37 C.F.R. §1.131 was drafted for execution by the inventors in order to declare that they conceived and reduced to practice the subject matter of the above identified patent application prior to April 30, 1998, the earliest effective filing date of the Powers '368 patent. A copy of the Declaration, supporting documentation, the claims, and the Powers '368 patent were sent via Federal Express to inventors Douglas A. Sudberry, James A. Eiler, Robert S. Bennett and Clifford R. Phillips, at their last known home address on June 26, 2002 and via hand delivery to inventor Michael C. Powers on July 3, 2002.

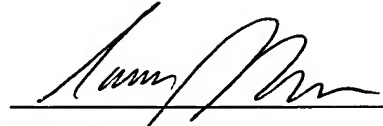
6. The delivery of the documents to the inventors was verified through FedEx Express Tracking. An executed Declaration was received from inventors Douglas A. Sudberry and Robert S. Bennett but an executed Declaration has not yet been received from inventors Michael C. Powers, James A. Eiler, and Clifford R. Phillips in response to the letter dated June 26, 2002. Upon request, copies of the Claims were furnished to Clifford Phillips and Michael Powers on June 28 and July 9, 2002, respectively. Further attempts to contact the inventors were without success as they are either unavailable or refuse to return any messages.

7. Based on the foregoing, I conclude that the inventors are unavailable or refuse to execute the Declaration. Therefore, the Declaration executed by inventors Douglas A. Sudberry and Robert S. Bennett is sufficient pursuant to M.P.E.P. §715.04.

8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. Further, I declare that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title

18 of the United States Code, and that such willful false statements may jeopardize the validity of the Application or any patent issuing thereon.

Executed this 11th day of September, 2002.



Samir A. Bhavsar

☒ DELIVERY
☒ PICK UP
☒ ROUND TRIP

☒ ASAP
☐ 1 HOUR
☐ 2 HOUR
☐ 4 HOUR

BAKER BOTTS L.L.P.
2001 Ross Avenue
Dallas, Texas 75201-2980
214.953.6500

MESSENGER REQUEST

Deliver to:

Mr. Michael Powers
812 W. Royal Lane, #342
Irving, Texas 75039

Requester:
Extension:
Attorney Name:
Employee No.:

Roseanne Cisneros de Chairez, PLS
214.953.6510
Thomas H. Reger, II (214.953.6453)
04428

☐ Austin ☒ Dallas ☐ Houston ☐ D.C. ☐ New York

Phone:

Return recorded material to:

Roseanne Cisneros de Chairez, PLS

Special
Instructions:

Signature required?

☒ No ☐ Yes

Leave if no response?

☐ No ☒ Yes

Client Name:

E-Talk Corporation

Matter Name:

019143

Billing No.:

0272

Signature (BB Mailroom)

Pick-up time:

Time completed:

☐ A.M. ☐ P.M.
☐ A.M. ☐ P.M.

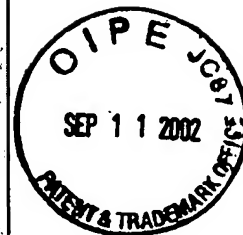
July 3, 2002

DATE

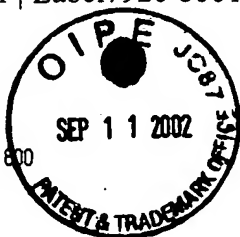
214.871.0889

KS COURIER

ORIGINAL COPY



From: TOM REGER (214)953-6453
BAKER BOTTS LLP
2001 ROSS AVENUE, SUITE 800
DALLAS, TX, 75201

**FedEx.****To: James Eiler (214)953-6453****2508 Syracuse****Irving, TX, 75062**

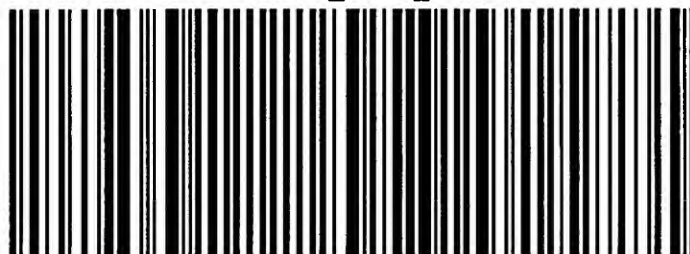
Ref: 019143.0272 04428 Reger



DELIVERY ADDRESS BARCODE (FEDEX-EDR)

TRK # 7920 6001 9817

5201

FedEx PRIORITY OVERNIGHT DFW**75062-TX-US****A0 JMDA**SHIP DATE: 26JUN02
WEIGHT: 1 LBS**THU
A1**Deliver by:
27JUN02

Shipping Label

[Schedule Courier](#)[Find a Dropoff Location](#)[Shipping History](#)[Shipment Complete](#)[Cancel Shipment](#)[Edit Shipment Information](#)

1. Use the "Print" feature from your browser to send this page to your laser printer.
2. Fold the printed page along the horizontal line.
3. Place label in air waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Shipment Details

To print a copy of the shipment information for your records, please click "Shipment Details".

[Shipment Details](#)

Ship a New Package

[Ship Inside U.S.](#)[Ship Outside U.S.](#)[Ship to Same Recipient](#)

Use of this system constitutes your agreement to the service conditions in the current FedEx service Guide, available upon request.

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.



United States

[Ship](#) [Track](#) [Rates](#) [Signature Proof](#) [Locations](#) [Pickup](#) [International Tools](#)[Home](#) | [About FedEx](#) | [Service Info](#) | [Careers](#) | [eBusiness Tools](#) | [Manage My Account](#) | [Customer Service](#) | [Site Index](#)[Select More Online Services](#)

Search for



- ▶ [Track Shipments](#)
- ▶ [Alternate Reference Track](#)
- ▶ [Email Track](#)
- ▶ [FedEx InSight](#)
- ▶ [Custom Critical](#)
- ▶ [Cargo Track](#)
- ▶ [FedEx Freight](#)

Track Shipments**Detailed Results**

View detailed results for:

[Previous](#) **792060019817**[Quick Help](#)**Related Links**

- ▶ [Signature Proof](#)
- ▶ [My FedEx](#)
- ▶ [FedEx Wireless Solutions](#)
- ▶ [Print, Bind & Ship](#)
- ▶ [FedEx Address Checker](#)

Tracking Number 792060019817
Reference Number 019143.0272 04428 RGER
Ship Date 06/26/2002
Delivered To
Delivery Location IRVING TX
Delivery Date/Time 06/28/2002 13:49
Signed For By .EILER
Service Type Priority Pak

Tracking Options

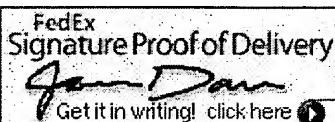
- Obtain a [Signature Proof of Delivery](#)
- Email these tracking results to one or more recipients
- Return to [Summary Results](#)
- [Track More Shipments](#)

**Scan Activity**

Delivered IRVING TX

Date/Time

06/28/2002 13:49

Comments**Email Your Detailed Tracking Results**

Enter your email (optional), up to three email addresses as recipients, add your message, and click on **Send Email**.

From**To****To****To**

Add a message to this email.

Send Email[fedex.com Terms of Use](#) | [Contact Us!](#)

This site is protected by copyright and trademark laws under U.S. and International law. Review our [privacy policy](#). All rights reserved.
© 1995-2002 FedEx

From: TOM REGER (214)953-6453
BAKER BOTTS LLP
2001 ROSS AVENUE, SUITE 600

DALLAS, TX, 75201

REVENUE BARCODE

**FedEx.****To: Clifford R. Phillips (214)953-6453****4040 West Royal Lane, Suite 100****Irving, TX, 750632825**

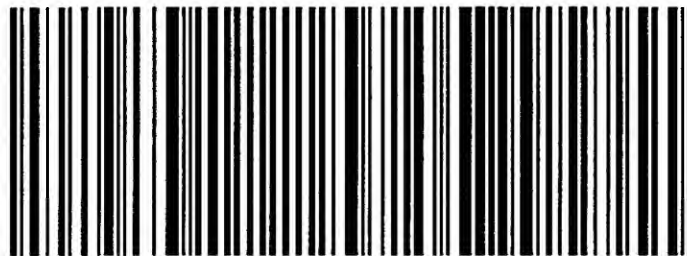
Ref: 019143.0272 04428 Reger

SHIP DATE: 26JUN02
WEIGHT: 1 LBS

DELIVERY ADDRESS BARCODE(FEDEx-EDR)

TRK # 7905 5293 2384 FORM 0201FedEx **PRIORITY OVERNIGHT****DFW**

75063-TX-US

A0 JMDA**THU
A1**Deliver by:
27JUN02

Shipping Label

[Schedule Courier](#)[Find a Dropoff Location](#)[Shipping History](#)[Shipment Complete](#)[Cancel Shipment](#)[Edit Shipment Information](#)

1. Use the "Print" feature from your browser to send this page to your laser printer.
2. Fold the printed page along the horizontal line.
3. Place label in air waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Shipment Details

To print a copy of the shipment information for your records, please click "Shipment Details".

[Shipment Details](#)

Ship a New Package

[Ship Inside U.S.](#)[Ship Outside U.S.](#)[Ship to Same Recipient](#)

Use of this system constitutes your agreement to the service conditions in the current FedEx service Guide, available upon request. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.



United States:

[Ship](#) [Track](#) [Rates](#) [Signature Proof](#) [Locations](#) [Pickup](#) [International Tools](#)[Home](#) | [About FedEx](#) | [Service Info](#) | [Careers](#) | [eBusiness Tools](#) | [Manage My Account](#) | [Customer Service](#) | [Site Index](#)[Select More Online Services](#)

Search for

- ▶ [Track Shipments](#)
- ▶ [Alternate Reference Track](#)
- ▶ [Email Track](#)
- ▶ [FedEx InSight](#)
- ▶ [Custom Critical](#)
- ▶ [Cargo Track](#)
- ▶ [FedEx Freight](#)

Track Shipments Detailed Results

[Quick Help](#)

View detailed results for:

 [Next](#)

Related Links

- ▶ [Signature Proof](#)
- ▶ [My FedEx](#)
- ▶ [FedEx Wireless Solutions](#)
- ▶ [Print, Bind & Ship](#)
- ▶ [FedEx Address Checker](#)

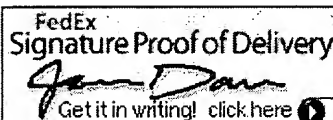
Tracking Number 790552932384
Reference Number 019143.0272 04428 RGER
Ship Date 06/26/2002
Delivered To
Delivery Location IRVING TX
Delivery Date/Time 06/27/2002 08:48
Signed For By D.WALTON
Service Type Priority Pak

Tracking Options

- Obtain a [Signature Proof of Delivery](#)
- [Email these tracking results](#) to one or more recipients
- Return to [Summary Results](#)
- [Track More Shipments](#)



| Scan Activity | Date/Time | Comments |
|---------------|-----------|------------------|
| Delivered | IRVING TX | 06/27/2002 08:48 |



Email Your Detailed Tracking Results

Enter your email (optional), up to three email addresses as recipients, add your message, and click on **Send Email**.

From
To
To
To

Add a message to this email.

[Send Email](#)[fedex.com Terms of Use](#) | [Contact Us!](#)

This site is protected by copyright and trademark laws under U.S. and International law. Review our [privacy policy](#). All rights reserved.
© 1995-2002 FedEx

Reger, Thomas

From: Phillips, Cliff [Cliff.Phillips@e-talkcorp.com]
Sent: Friday, June 28, 2002 2:45 PM
To: Tom.Reger@bakerbotts.com
Subject: RE: Claims 1-17 for .0272

Thank You!

Clifford Phillips

-----Original Message-----

From: Tom.Reger@bakerbotts.com [<mailto:Tom.Reger@bakerbotts.com>]
Sent: Friday, June 28, 2002 2:13 PM
To: Phillips, Cliff
Subject: Claims 1-17 for .0272

<<Claims for ETalk(0272).doc>>
Clifford,

I attached the claims as they currently stand in the prosecution process.
Please call or email me to confirm receipt. Thanks.
Best regards,

Thomas H. Reger II
Baker Botts L.L.P.
2001 Ross Ave., Suite 600
Dallas, TX 75201
Office (214) 953-6453
Cell (214) 403-5171
Fax (214) 661-4453

Reger, Thomas

From: Michael C. Powers [mcp-home@swbell.net]
Sent: Tuesday, July 09, 2002 11:40 AM
To: Tom.Reger@bakerbotts.com
Subject: RE: E-Talk FedEx package

Good morning,

Yes I received your package and reviewed it over the weekend. Before signing I would like one additional piece of information. Your package included everything EXCEPT a copy of the Teknekron patent application itself. As it has been a few years since we applied for this particular patent, I would like a copy to review just to make sure I'm clear on the feature in question. You may send it electronically, via e-mail, or by post to the address your package went to. Thanks.
mikep.

-----Original Message-----

From: Tom.Reger@bakerbotts.com [mailto:Tom.Reger@bakerbotts.com]
Sent: Monday, July 08, 2002 11:19 AM
To: mcp-home@swbell.net
Subject: RE: E-Talk FedEx package

Michael,

I appreciate the email. Have you received the package yet? We were hoping to receive all of the declarations early this week. Do you think this is doable? Once again, I appreciate your time.

Thomas H. Reger II
Baker Botts L.L.P.
2001 Ross Ave., Suite 600
Dallas, TX 75201
Office (214) 953-6453
Cell (214) 403-5171
Fax (214) 661-4453

-----Original Message-----

From: Michael C. Powers [mailto:mcp-home@swbell.net]
Sent: Monday, July 01, 2002 2:29 PM
To: Tom.Reger@bakerbotts.com
Subject: RE: E-Talk FedEx package

Hello,

Only a slight correction. My apartment number is 342, not 343. Package should then be delivered fine since I've received FedEx packages here before.

Michael C. Powers

-----Original Message-----

From: Tom.Reger@bakerbotts.com [mailto:Tom.Reger@bakerbotts.com]
Sent: Monday, July 01, 2002 9:58 AM
To: mcp-home@swbell.net
Subject: E-Talk FedEx package

Michael,

I am a patent attorney working on a patent application in which you are the lead inventor. We are trying to beat a reference by proving that you developed your invention before the Patent Office's reference. I sent you a Fed Ex package that was signed by S. Bakare and then returned to me. The address I have for you is:

Michael Powers
812 W. Royal Lane, #343
Irving, Texas 75039
972/506-7664

Could you email me the correct address for you? Thanks.
Regards,

Thomas H. Reger II
Baker Botts L.L.P.
2001 Ross Ave., Suite 600
Dallas, TX 75201
Office (214) 953-6453
Cell (214) 403-5171
Fax (214) 661-4453